

107TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. BROWNBACK (for himself and Mr. ENZI) introduced the following bill;
which was read twice and referred to the Committee on _____

A BILL

To facilitate the deployment of broadband
telecommunications services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Broadband Deploy-
5 ment and Competition Enhancement Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) In 2001, some broadband service providers
10 are pervasively regulated, and some offering func-

1 tionally equivalent services are not significantly reg-
2 ulated.

3 (2) Common carrier regulation is being ex-
4 tended inappropriately to new broadband services
5 being deployed by incumbent local exchange carriers,
6 while no regulation is applied to new broadband
7 services being deployed by local cable television com-
8 panies.

9 (3) There should be deregulatory parity in the
10 provision of broadband services.

11 (4) Broadband services and broadband service
12 providers should be subject to little or no regulation,
13 as there are no monopoly providers of such services
14 and regulation of a nascent service inhibits the de-
15 velopment of a competitive market.

16 (5) Facilities used to provide broadband serv-
17 ices, such as packet switching, are widely available
18 in the market place and should therefore not be con-
19 sidered a network element, which common carriers
20 must make available to other providers. Access
21 should continue for essential facilities.

22 (6) It is important for the economic develop-
23 ment of the United States that all areas of the coun-
24 try receive the benefits of access to high speed Inter-
25 net and the deployment of broadband services.

1 (7) Common carrier regulation will not induce
2 the deployment of broadband services, but will re-
3 tard it.

4 (8) Both Federal and State regulatory agencies
5 have followed a regulatory scheme with respect to
6 broadband services, and this pattern must be re-
7 versed.

8 (b) PURPOSES.—The purposes of this Act are as fol-
9 lows:

10 (1) To accelerate the deployment of broadband
11 services to all parts of the United States.

12 (2) To achieve deregulatory parity among pro-
13 viders of broadband services.

14 (3) To reduce regulation of broadband services
15 by the Federal Government and the States.

16 **SEC. 3. DEPLOYMENT OF BROADBAND SERVICES.**

17 (a) IN GENERAL.—Part II of title II of the Commu-
18 nications Act of 1934 (47 U.S.C. 251 et seq.) is amended
19 by adding at the end the following new section:

20 **“SEC. 262. DEPLOYMENT OF BROADBAND SERVICES.**

21 “(a) OPT-IN.—This section applies to an incumbent
22 local exchange carrier only if the local exchange carrier
23 provides written notice to the Commission of its decision
24 to comply with the provisions of this section.

1 “(b) NEXT GENERATION BROADBAND DEPLOY-
2 MENT.—

3 “(1) IN GENERAL.—An incumbent local ex-
4 change carrier shall not be subject to the require-
5 ments of section 251(c) with respect to any optical
6 fiber facility, or any technology of like functionality,
7 in the local exchange carrier’s network that is used
8 to provide service to residential customers; and

9 “(A) that is or was—

10 “(i) deployed where no outside tele-
11 phone distribution plant previously existed;

12 or

13 “(ii) deployed from any structure or
14 premise to a customer premises; and

15 “(B) if the facility is capable of providing
16 advanced service.

17 “(2) RIGHTS OF WAY.—Any provider of facili-
18 ties referred to in paragraph (1) shall have the duty
19 to coordinate and cooperate with other local ex-
20 change carriers to provide access to rights of way
21 consistent with section 251(b)(4).

22 “(3) ACCESS TO EXISTING COPPER LOOP.—
23 Nothing in this subsection shall preclude the Com-
24 mission or a State from requiring that an incumbent

1 local exchange carrier provide an existing copper
2 loop to another local exchange carrier upon request.

3 “(c) COMPETITION ENHANCEMENT.—

4 “(1) IN GENERAL.—Notwithstanding section
5 2(b), or any other provision of law, an incumbent
6 local exchange carrier shall not be subject to the re-
7 quirements of—

8 “(A) section 251(c), except as provided in
9 paragraph (2) of this subsection, with respect
10 to its packet switching capability, or any suc-
11 cessor technology; or

12 “(B) section 251(c) with respect to the re-
13 sale of advanced service or high-speed Internet
14 access service.

15 “(2) COLLOCATION.—

16 “(A) IN GENERAL.—An incumbent local
17 exchange carrier has the duty to provide col-
18 location at its central offices in accordance with
19 the rules of the Commission established in ac-
20 cordance with section 251(c)(6) for equipment
21 to be used in the provision of advanced service.

22 “(B) REMOTE TERMINAL.—Neither the
23 Commission nor a State may require collocation
24 for equipment for the provision of advanced
25 service inside a remote terminal where no space

1 for collocation of such equipment is available.
2 Collocation of advanced service equipment in
3 the remote terminal shall not include collocation
4 inside or within any equipment, components, or
5 facilities located inside the remote terminal.

6 “(d) BUILD-OUT REQUIREMENT.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (3), an incumbent local exchange carrier or
9 affiliate shall be capable of providing advanced serv-
10 ice to all of its local exchange service customers in
11 a State not later than 5 years after the date of en-
12 actment of the Broadband Deployment and Competi-
13 tion Enhancement Act of 2001, thereafter within 30
14 days of a bona fide request by any such local ex-
15 change service customer.

16 “(2) MEANS OF ADDRESSING REQUIREMENT.—

17 An incumbent local exchange carrier or affiliate may
18 use any technology, service, or combination of serv-
19 ices to meet the requirement in paragraph (1).

20 “(3) EXEMPTION.—An incumbent local ex-
21 change carrier or affiliate is exempt from the re-
22 quirement in paragraph (1) if the provision of ad-
23 vanced service to a customer is not both technically
24 and economically feasible.

1 “(e) PRICING FLEXIBILITY FOR RETAIL ADVANCED
2 SERVICE.—

3 “(1) INAPPLICABILITY OF GOVERNMENTAL
4 REGULATION.—The rates, terms, and conditions of
5 retail advanced service offered by an incumbent local
6 exchange carrier or its affiliates to subscribers are
7 not subject to Federal, State, or local regulation.

8 “(2) CONSTRUCTION.—Nothing in this sub-
9 section shall be construed to affect the obligations of
10 a Bell operating company under section 272(c).

11 “(f) ENFORCEMENT.—

12 “(1) FAILURE TO BUILD-OUT.—If an incum-
13 bent local exchange carrier cannot comply with sub-
14 section (d)(1) as of the date specified in that sub-
15 section, subsections (c) and (e) shall no longer apply
16 to such carrier as of that date.

17 “(2) NONCOMPLIANCE WITH LOOP PROVI-
18 SIONING AND COLLOCATION RULES.—

19 “(A) IN GENERAL.—Except as provided in
20 paragraph (3), subsections (c) and (e) shall
21 cease to apply to an incumbent local exchange
22 carrier as of the date on which a State makes
23 a final and nonappealable determination, based
24 on clear and convincing evidence and in re-

1 sponse to a complaint filed by another local ex-
2 change carrier, that—

3 “(i) the incumbent local exchange car-
4 rier has willfully and materially failed to
5 comply with the rules of the Commission
6 with respect to collocation or loop provi-
7 sioning; and

8 “(ii) such failure has caused material
9 harm to the complaining carrier’s ability to
10 compete.

11 “(B) BURDEN OF PROOF.—The burden of
12 proof in a complaint under subparagraph (A)
13 shall be on the complainant.

14 “(3) REINSTATEMENT.—

15 “(A) IN GENERAL.—An incumbent local
16 exchange carrier to which subsections (c) and
17 (e) have ceased to apply because of a deter-
18 mination by a State under paragraph (2) may
19 petition the State for a reinstatement of the ap-
20 plication of subsections (c) and (e) to such car-
21 rier.

22 “(B) DETERMINATION.—If a State that
23 makes a determination described in paragraph
24 (2) subsequently makes a final determination
25 that the carrier concerned has complied fully

1 with the rule with which the carrier was found,
2 under paragraph (2), not to have complied, the
3 application of subsections (c) and (e) to the car-
4 rier shall be reinstated as of the date of that
5 subsequent final determination.

6 “(C) FAILURE OF STATE TO ACT WITHIN
7 90 DAYS.—For purposes of subparagraph (B),
8 a State that fails to make a determination on
9 a petition filed under subparagraph (A) within
10 90 days of the date of the filing of the petition
11 shall be deemed to have made a determination
12 that the carrier concerned is in full compliance
13 with the rules of the Commission with respect
14 to collocation or loop provisioning.

15 “(g) DEFINITIONS.—In this section:

16 “(1) INCUMBENT LOCAL EXCHANGE CAR-
17 RIER.—The term ‘incumbent local exchange carrier’
18 has the meaning given that term in section 251(h).

19 “(2) CUSTOMER PREMISES.—The term ‘cus-
20 tomer premises’ means a customer’s physical prop-
21 erty and any adjacent easements.

22 “(3) PACKET SWITCHING CAPABILITY.—The
23 term ‘packet switching capability’ has the meaning
24 given that term in section 51.319(c)(4) of title 47,

1 Code of Federal Regulation, as that section is in ef-
2 fect as of June 1, 2001.

3 “(4) REMOTE TERMINAL.—The term ‘remote
4 terminal’ means a point in a local exchange carrier’s
5 network, not including a central office, where the
6 electronic capability to provide advanced service is
7 deployed.

8 “(5) ADVANCED SERVICE.—The terms ‘ad-
9 vanced service’ and ‘high-speed Internet access serv-
10 ice’ mean any service or combination of services that
11 consists of, or includes, the offering of a capability
12 to transmit information using a packet switched or
13 successor technology downstream from a provider to
14 a consumer at a generally rated speed of 364 or
15 kilobits per second or higher.”.

16 **SEC. 4. AMENDMENT.**

17 Section 251(c)(3) of the Communications Act of 1934
18 (47 U.S.C. 251(c)(3)) is amended by adding at the end
19 the following: “An incumbent local exchange carrier shall
20 not be required to convert to a network element or com-
21 bination of network elements any special access circuit
22 being provided on June 1, 2001.”.

23 **SEC. 5. REGULATORY PARITY.**

24 (a) IDENTIFICATION OF DISPARATE REGULATORY
25 TREATMENT OF ADVANCED SERVICE.—Not later than 6

1 months after the date of the enactment of this Act, the
2 Federal Communications Commission shall identify in its
3 regulations any requirements or obligations that result in
4 different or disparate treatment among various types of
5 providers of advanced service and high-speed Internet ac-
6 cess service or among different technologies used to pro-
7 vide such service.

8 (b) TERMINATION OF APPLICABILITY.—Not later
9 than one year after the date of the enactment of this Act,
10 the Commission shall modify its regulations in order to
11 eliminate each difference and disparity in treatment iden-
12 tified under subsection (a) unless the Commission deter-
13 mines that such difference or disparity in treatment
14 should continue to apply in the public interest.

15 (c) BIENNIAL REVIEW.—In every biennial review
16 conducted pursuant to section 11 of the Communications
17 Act of 1934 (47 U.S.C. Sec. 161), the Commission shall—

18 (1) make a determination as to whether or not
19 a difference or disparity in treatment, if any, that
20 continues to apply under subsection (b), or under
21 this subsection after subsequent review under this
22 subsection, should continue to apply in the public in-
23 terest; and

24 (2) if the Commission determines that such dif-
25 ference or disparity in treatment should not continue

1 to apply in the public interest, modify its regulations
2 in order to eliminate such difference or disparity in
3 treatment.

4 (d) ADVANCED SERVICE DEFINED.—In this section,
5 the terms “advanced service” and “high-speed Internet ac-
6 cess service” have the meanings given those terms in sec-
7 tion 262(h)(4) of the Communications Act of 1934, as
8 added by section 2 of this Act.